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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,895	07/10/2003	Robert P. Meagley	ITL.0907US (P15299)	1697
21906	7590	12/23/2005	EXAMINER	
TROP PRUNER & HU, PC 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024				SCHILLING, RICHARD L
ART UNIT		PAPER NUMBER		
1752				

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/616,895	MEAGLEY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Richard L. Schilling	1752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 18 November 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1,4-15,18,19,22-25 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-15,18,19,22-25,28-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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1. Claims 1, 4-15, 18,19, 22-25 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sezi et al. in view of Hattori et al. for the same reasons as set forth in paragraph 4 of the last office action filed 7-18-05.

2. Claims 1, 4-15, 18, 19, 22-25 and 28-30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20 and 21 of copending Application No. 10/337575 for the same reasons as set forth in paragraph 3 of the last office action. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. The amendment to the claims limiting the filler to zirconia does not overcome this rejection since the claims of 10/337575 reasonably include the fillers disclosed as suitable in the specification wherein zirconia is disclosed.

3. Applicant's arguments filed 11-07-05 have been fully considered but they are not persuasive. The declaration is unconvincing since it lacks any details of the comparisons preformed, e.g. particle sizes and concentrations. Also, there is no basis in the specification for the property of thixotropy being important or critical to the invention. The specification discloses silica and zirconia as equivalent fillers and is silent as to thixotropy. Also, since the specific zirconia fillers in the specification are 13nm and at 9-20% by wt., the declaration may not be commensurate in scope with the claimed subject matter of sizes <100nm and any concentration. The declaration does not overcome the double patenting rejection since the claims include the disclosed fillers of zirconia. It is noted that claim 15 does not have % by weight as in other claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Richard L. Schilling at telephone number 571-272-1335.

RICHARD L. SCHILLING  
PRIMARY EXAMINER  
GROUP 1469 1752

